Appl. No. 09/842,754
Appeal Brief dated February 27, 2006

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No.   : 09/842,754   Confirmation No.: 8266
Applicant(s): Richard A. Pineau et al.
Filed   : April 26, 2001
Title   : METHOD AND APPARATUS FOR REMOTE
               : PROCESSING AND SHARING DIGITAL
               : IMAGES
TC/A.U.   : 2153
Examiner   : Sean M. Reilly

Docket No.   : 8410
Customer No.: 20349

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P.O. Box 1450
Alexandria, VA   22313-1450

APPEAL BRIEF

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Sir:

This is appellants' Appeal Brief in the appeal taken from the final rejection of claims 1 - 15, 19 and 29 of the application as set forth in the Office Action, made final, mailed June 30, 2005. A three (3) month extension of the time period to file the Appeal Brief has been obtained by a Petition filed on even date herewith.

REAL PARTY IN INTEREST

The real party in interest in this appeal is Polaroid Corporation, a corporation organized and existing under the laws of the State of Delaware, of 1265 Main Street, Waltham, MA 02451.

RELATED APPEALS AND INTERFERENCES

There are no related appeals and interferences.

STATUS OF CLAIMS

1.   Claims 1 - 15, 19 and 20 have been rejected as being unpatentable over the references applied in support of the rejections.

2.   Claims 26 - 28 have been withdrawn from consideration pursuant to a requirement for Restriction.

STATUS OF AMENDMENTS

Appellants did not file an amendment after the final Office action and elect to prosecute this appeal on the basis of the claims which were in the application prior to the final Office Action.

SUMMARY OF INVENTION

Appellants' claims are directed to a an apparatus and method that enables the users of digital image acquisition devices to obtain hard copy output from or to share the digital images by transmitting the images to a remote node of a communication network through an automatically determined closest entry point.

It is highly desirable for the user to connect to the network entry point closest to the location of his/her communication apparatus to minimize toll charges. It is also highly desirable for the communication apparatus to use a method of automatically determining the closest entry point to save the user the time and effort of having to engage in a manual, interactive dialog with the remote server to provide it with the user's present location and then receive back from the server the contact information.

The present invention provides the automatic determination of the closest entry point feature in the claimed image data communication method and apparatus to minimize the toll charges and save the user the time and

effort of the manually interactive dialog with the
remote server.

The automatic determination of the closest
entry point in the present invention involves
automatically sending information over a toll free link
to the server to ascertain the location of the
communication apparatus, at the network, automatically
recognizing the location, comparing the location to list
of network entry points, selecting the closet entry
point and sending the contact information back to the
communication apparatus which automatically uses the
contact information to establish communication with the
data network via the closest entry point.

In one embodiment, Caller ID information is
used to ascertain the location of the communication
apparatus. In another embodiment, GPS information is
used to ascertain the location of the communication
apparatus.

REFERENCES APPLIED BY EXAMINER

1. International Patent Application
Publication No. WO 00/01138 ("Steinberg et al.").

2. U.S. Patent No. 6,795,852 B1 ("Kleinrock
et al.").

3. U.S. Patent No. 5,995,239 ("Kagawa et
al.").

DISCUSSION OF THE REFERENCES

1. Steinberg et al. relates to a
communication device for interconnecting a digital

camera to a communications network for downloading data to a remote computer.

2. Kleinrock et al. relates to an automatic network connection wherein users call one telephone number from their computer communications link-up. As described in the Abstract, the computer figures out the most appropriate (e.g. cheapest/proximal/etc.) number the user should use to connect to the "Net", which includes cost of the phone call and of the services provided by service providers.

3. Kagawa et al. relates to a facsimile apparatus for sending and receiving image data. As described in the Abstract, whether or not the apparatus continues resending image data is determined on the basis of a resending condition or conditions known by a transmitting station or a receiving station.

ISSUES

A. Whether the subject matter of claims 1 - 5, 7 - 15, 19 and 20 is unpatentable under 35 USC § 103(a) over Steinberg et al. and Kleinrock et al.

B. Whether the subject matter of claim 6 is unpatentable under 35 USC § 103(a) over Steinberg et al. and Kleinrock et al. and further in view of Kagawa et al.

GROUPING OF CLAIMS

Pursuant to 37 CFR 1.192(c)(7), appellants request that the claims on appeal be considered as two separate groups as follows:

      1.   Claims 1 - 5, 7 - 15, 19 and 20.

      2.   Claim 6.

ARGUMENT

Summary

There is no suggestion or incentive to be found in the references cited to support the obviousness rejections which would place one skilled in the art in possession of the claimed subject matter as is required to properly support the rejections under 35 U.S.C. § 103(a). The USPTO has not sustained the burden of showing that the claimed subject matter is unpatentable within the meaning of Section 103.

Issue (A)

Appellants' invention provides an apparatus and method that enables the users of digital image acquisition devices to obtain hard copy output from or to share the digital images by transmitting the images to a remote node of a communication network through an automatically determined closest entry point. The method of appellants recited in claim 1 requires the recited steps including the step of automatically determining a closest entry point into the data communications network including the steps of

(a) automatically sending information from said communication apparatus, via a toll free link, to the data communication network to ascertain the location of said communication apparatus;

(b) at the data network, automatically recognizing the location of said communication apparatus, comparing the location to a stored list of network entry points and selecting the closest entry point, and transmitting back to said communication apparatus the contact information for the selected closest entry point; and

(c) at said communication apparatus, automatically using the provided contact information to establish communication with the data network via the closest entry point;

The automatic determination of the closest entry point in the present invention involves automatically sending information over a toll free link to the server to ascertain the location of the communication apparatus, at the network, automatically recognizing the location, comparing the location to list of network entry points, selecting the closet entry point and sending the contact information back to the communication apparatus which automatically uses the contact information to establish communication with the data network via the closest entry point.

Independent apparatus claim 15 includes means for carrying out such functions.

In support of the rejection, the Office Action asserts that Steinberg et al. discloses all of the

claimed steps or elements except it "... does not specifically teach automatically determining a closest entry point into the data communications network." Thus, it is acknowledged that Steinberg et al. does not teach or suggest a critical element of the claimed method and apparatus of appellants.

The Office Action relies on Kleinrock et al. to provide the teaching which is missing in the primary reference. At page 3 of the Office Action it is stated that

> Nevertheless it is well known in the art
> at the time of the invention to automatically
> determine the closest entry point into a
> data communication network, as evidenced by
> Kleinrock. In an analogous art, Kleinrock
> disclosed an automatic network connection
> system which...:

Reference is made to the disclosure at column 4, lines 23 - 32.

> The Office Action concludes that

> It would have been obvious to one of ordinary
> skill in the art at the time of the invention
> to incorporate the automatic connection system
> disclosed by Kleinrock, within Steinberg's
> system so users can be automatically connected
> to the most appropriate phone number and
> thereby avoid enormous long distance telephone
> charges (Kleinrock Col 1, lines 25 - 33).

Appellants submit that this conclusion is based on an improper combination of the prior art references.

In order to properly support a rejection under Section 103 the reference(s) must place the claimed subject matter in the possession of the general public. The reference(s) must provide some teaching or

suggestion which would enable those skilled in the art,
in conjunction with their knowledge of the state of the
art, to know of the claimed invention. Here the
references do not provide such a teaching or suggestion.

Kleinrock et al. teaches a method wherein a
user calls one telephone number from a computer
communication connection and the call goes into a
computer having a database of the access numbers of many
service providers. The receiving computer identifies
where the user is calling from via an identifying
feature and then determines the most appropriate, for
example, the cheapest or most proximal number the user
should use to connect to the Internet including the cost
of the phone call and of the service provided by the
service providers.

The method of Kleinrock et al. is remote from
that of appellants and also from that of Steinberg et
al. In essence, this reference provides a method for
connecting a user to a computer information network via
a computer network. Kleinrock et al. does not anywhere
suggest anything with respect to an apparatus and method
that enables the users of digital image acquisition
devices to obtain hard copy output from or to share the
digital images by transmitting the images to a remote
node of a communication network through an automatically
determined closest entry point.

Since the methods of the references are remote
from each other, there is no suggestion to be found in
either reference to combine their teachings in the
manner described in the Office Action to support the

rejection. It is acknowledged that Steinberg et al. does not suggest a critical feature of appellants' claimed invention. Kleinrock et al. does not suggest automatic determination of the closest entry point within the context of appellants' claimed method and system.

For all the foregoing reasons, the combination of Steinberg et al. and Kleinrock et al. does not support the rejection of claims 1 – 5, 7 – 15, 19, and 20 under 35 U.S.C. §103(a). The USPTO has failed to sustain the burden of showing that the claimed subject matter is unpatentable.

Issue (B)

Claim 6 has been rejected as being unpatentable under 35 USC § 103(a) over Steinberg et al. and kleinrock et al. and further in view of Kagawa et al.

Claim 6 is dependent upon claim 1 and recites the embodiment wherein the transmission of the image or plurality of images from the apparatus to the remote node of the communication network includes recited steps (A) – (G).

Claim 6 is patentably distinguishable over these references for the same reasons discussed above with respect to Steinberg et al. and Kleinrock et al. and further because Kagawa et al. does not teach or suggest critical features of appellants' claimed subject matter including the step of automatically determining a

closest entry point into the data communications network.

In support of this ground of rejection the Office Action states (see the first paragraph on page 5) that

> ...Steinberg does not specifically recite the plurality of transmission rates of data images between the system and the remote node. However, Kagawa teaches that when data is transmitted successfully the system increases the transmission rate to increase the mean transmission rate.

The Office Action (see page 5) concludes that it "...would have been obvious to one of ordinary skill in the art to be motivated to introduce an alternative or obvious modification of Kagawa teachings to enhance the communication rate and reliability of data transmission as disclosed in col. 12, lines 14 – 16."

Appellants' submit that this conclusion is not justified based on the disclosures of the references. Steinberg et al. and Kleinrock et al. have been discussed in detail above. Kagawa et al. discloses a facsimile apparatus for sending and receiving image data. The disclosure of Kagawa et al. is remote from appellants' claimed subject matter and does not provide any suggestion, individually or in combination with the other references, that would teach appellants' claimed subject matter according to the requirements of Section 103.

In addition, there is no justification for taking from Kagawa et al. only a specific teaching out of the context of the overall disclosure of the

reference and combining that specific teaching with the other references. Doing so represents impermissible reconstruction of the prior art.

Therefore the combination of Steinberg et al., Kleinrock et al. and Kagawa et al. does not teach the subject matter of claim 6 within the meaning of Section 103.

CONCLUSION

For all of the foregoing reasons the 35 USC § 103 rejections should be reversed and claims 1 - 15, 19 and 20 allowed.

Respectfully submitted,

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CLAIMS APPENDIX

Claims On Appeal

Claim 1. A method of transmitting to a remote node in a data communications network, digital images from an image data source, comprising the steps of:

providing the customer a specific communication apparatus, said communication apparatus having identifying information stored in a memory thereof; and

accessing and transferring one image or a plurality of images from the image data source to said communication apparatus;

automatically determining a closest entry point into the data communications network including the steps of;

(a) automatically sending information from said communication apparatus, via a toll free link, to the data communication network to ascertain the location of said communication apparatus;

(b) at the data network, automatically recognizing the location of said communication apparatus, comparing the location to a stored list of network entry points and selecting the closest entry point, and transmitting back to said communication apparatus the contact information for the selected closest entry point; and

(c) at said communication apparatus, automatically using the provided contact information to establish communication with the data network via the closest entry point;

transmitting said image or plurality of images and said identifying information, through the closest entry point, to a remote node of the data communications network; and

receiving, at the remote node of the data communication network, said image or plurality of images and said identifying information.

Claim 2. The method of claim 1 wherein the identifying information is preset in the memory in the apparatus.

Claim 3. The method of claim 1 wherein in automatically determining said entry point GPS information is used.

Claim 4. The method of claim 2 wherein in automatically determining said entry point caller ID information is used.

Claim 5. The method of claim 1 wherein the communication network is the Internet, the closest entry point is an Internet Service Provider (ISP) and the remote node is a server.

Claim 6. The method of claim 1 wherein the transmission of the image or plurality of images from the apparatus to the remote node of the communication network comprises the steps of:

(A)   constructing from each image at least one
of a plurality of packets of information wherein the
image is comprised of the totality of packets;

(B)   transmitting a packet at a given data
rate;

(C)   determining whether the transmission was
successful; and

(D)   performing the following steps, if the
transmission is successful:

increasing the data rate,

determining if the data rate exceeds a select
maximum data rate;

setting the data rate to the maximum data
rate, if the data rate exceeds the select maximum data
rate;

(E)   decreasing the data rate, if the transmission
was not successful, until successful transmission is
achieved;

(F)   transmitting a next packet; and

(G)   repeating steps (B) through (F) until
the totality of packets is transmitted.

Claim 7. The method of claim 1 wherein the
transmission of the image or plurality of images from
the apparatus to the remote node of the communication
network further comprises the steps of:

detecting an interrupting signal; and

interrupting the transmission upon positive
detection of the interrupting signal; and

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re-attempting transmission after a waiting period
following an interruption.

Claim 8. The method of claim 7 wherein the
transmission of the image or plurality of images from
the apparatus to the remote node of the communication
network further comprises the steps of:

receiving synchronizing information from the remote
node, at the initiation of a transmission event;

synchronizing the transmission event with the
information received at the remote node.

Claim 9. The method of claim 1 further comprising
the steps of:

rendering the least one of said images in hardcopy
form at a remote node of the data communications
network.

Claim 10. The method of claim 1 further comprising
the steps of:

rendering the least one of said images in digital
form at the remote node of the data communications
network.

Claim 11. The method of claim 1 further comprising
the step of:

storing said image or plurality of images at a
remote node of the data communications network.

Claim 12. The method of claim 1 further comprising
the steps of:

sharing said image or plurality of images, in at
least one of a plurality of image product forms, with at
least one of a plurality of recipients.

Claim 13. The method of claim 1 wherein the
identifying information is received at the apparatus and
stored in the memory in the apparatus.

Claim 14. The method of claim 1 further comprising
the step of:

entering image data items into a data structure in
a memory at a remote node of the data communications
network.

Claim 15. A communications apparatus enabling the
transmission to a remote node in a data communications
network, of digital images from an image data source
and of identifying information, said communications
apparatus comprising:

means for accessing one image or a plurality of
images from the image data source;

means for storing identifying information in a
storage component of said apparatus;

means for automatically determining a closest entry
point into the data communications network comprising;

(a)   means for automatically sending information from said communication apparatus, via a toll free link, to the data communication network to ascertain the location of said communication apparatus;

(b)   at the data network, means for automatically recognizing the location of said communication apparatus, comparing the location to a stored list of network entry points and selecting the closest entry point, and transmitting back to said communication apparatus the contact information for the selected closest entry point; and

(c)   at said communication apparatus, means for automatically using the provided contact information to establish communication with the data network via the closest entry point; and

means for transmitting the image or plurality of images and the identifying information, through the entry point, to a remote node of the network.

Claim 19. The apparatus of claim 15 wherein said means for automatically determining the closest entry point into the data communications network comprise a GPS receiver.

Claim 20. The apparatus of claim 15 wherein said means for automatically determining the closest entry point into the data communications network utilize caller ID information.

EVIDENCE APPENDIX

Appellants have not submitted in the application any evidence pursuant to §§ 1.130, 1.131 and 1.132 of 37 Code of Federal regulations.
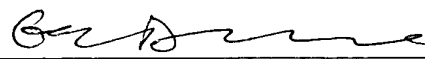
RELATED PROCEEDINGS APPENDIX

There are no decisions by a court or the Board
of Patent Appeals and Interferences in any related
proceedings.

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CERTIFICATE OF MAILING

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Date: February 27, 2006

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